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In the
Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75 - 1498

PAMELA FORTIER GOLZ and
WILLIAM J. GOLZ,
Appellants

versus

CHILDREN'S BUREAU OF NEW ORLEANS
INC.,
Appellee

On Appeal from the Supreme Court of
Louisiana

**MOTION OF APPELLEE TO DISMISS APPEAL
OR TO AFFIRM**

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

NO. 75-1498

PAMELA FORTIER GOLZ and
WILLIAM J. GOLZ,
Appellants

versus

CHILDREN'S BUREAU OF NEW ORLEANS, INC.,
Appellee

On Appeal from the Supreme Court of Louisiana

MOTION OF APPELLEE TO DISMISS APPEAL OR TO
AFFIRM

Appellee moves that the appeal herein taken be dismissed or that the final judgment and order of the Louisiana Supreme Court be affirmed on the grounds that said appeal does not present a substantial federal question, that the judgment and order rests on an adequate non-federal basis and that the judgment and order are so obviously correct under the findings of fact as to warrant no further review by this Court.

This is an appeal from a decision of the Supreme Court of Louisiana rejecting appellant's contention that Louisiana Revised Statutes 9:402, as applied, denies them due process of law under the Fourteenth Amendment to the Constitution of the United States. Title 9, Section 402 of the Louisiana Revised Statutes provides that blood parents may irrevocably surrender the permanent custody of their child to a licensed

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adoption agency for the placement of their child for adoption by executing a notarial Act of Surrender in the presence of a Notary Public and two witnesses. (See Appendix A).

I.
STATEMENT OF THE CASE

The statement of the case as set forth in appellant's brief differs so widely from the facts as found by the trial court (Appendix C) and the statement of facts as set forth in the decision of the Supreme Court of the State of Louisiana (Appendix B) that we find it necessary to set forth the facts as found by the Supreme Court of Louisiana, which are as follows:

The primary issue in this habeas corpus proceeding is whether or not a notarial act of surrender by parents of a child to a licensed adoption agency is valid and irrevocable. We hold that it is.

Petitioners, William Jonathan Golz and Pamela Marie Fortier Golz, are married and residents of Lafayette. On December 9, 1974, when Mrs. Golz was seven months pregnant, she came to New Orleans with the knowledge of her husband in order to arrange for the delivery of the baby at the New Orleans Charity Hospital and to initiate placement of the child for adoption. While in New Orleans, Mrs. Golz contacted the Children's Bureau of New Orleans, Inc., a state-licensed adoption agency. Mrs. Frances Keating, the intake supervisor, granted her an appointment on the same day. She conducted an intake interview, securing basic information concerning the family. She advised Mrs. Golz that placement would require the formal

consent of both parents in an act of surrender and that once the surrender had been signed, it was irrevocable. After the mother inquired how soon the surrender could be signed, the intake supervisor advised her that it could be executed after the child was born.

The intake supervisor arranged for the assignment of Diane Lambly, a caseworker, to the adoption so that Mrs. Golz would be able to confer with her on her hospital visit scheduled for the following week. Mrs. Golz cancelled her trip to New Orleans the following week and advised the adoption agency that she would notify it when she returned.

From December 9, 1974, to February 12, 1975, Mrs. Golz had several telephone and written communications with Diane Lambly, the caseworker. During this period she informed the agency that she had decided to have the baby delivered in Lafayette, instead of New Orleans. She expressed a desire to continue the adoption plan, and the caseworker assured her that it could be done, despite the change in the place of delivery.

The child, Joshua Golz, was born on Thursday, February 13, 1975. The following day, Mrs. Golz called the caseworker by telephone, advised her of the birth of the child, and made arrangements to bring the child for adoption on the weekend. The caseworker again explained that for placement both parents had to be present to execute a notarial act of surrender. She cautioned that when

the notarial instrument was signed, they could no longer change their minds concerning the adoption. Ultimately, after a series of telephone conversations, the father telephoned that he and his wife had changed their minds about adoption. The Children's Bureau then closed the case.

On April 9, 1975, Mrs. Golz came to the Children's Bureau with the child and asked the caseworker if the agency would provide foster care pending the signing of a surrender by herself and her husband. She informed the caseworker that her husband was out of the state, but that he was agreeable to signing a surrender for adoption. The caseworker explained to her that the agency did not accept children for long-term foster care, but that it would accept temporary custody under the circumstances.

When the caseworker failed to hear from the parents by April 15, she telephoned the father. He stated that they had changed their minds about adoption and would come and get the baby. On April 18, the parents secured the child, and the case was again closed.

On August 18, Mr. Golz again telephoned the caseworker, expressing a desire to place the child for adoption. He ultimately inquired whether an act of surrender could be signed the same day. The caseworker advised him that arrangements would have to be made with an attorney, but that she would call him back. A few minutes later, the caseworker telephoned the parents to inform them

that arrangements had been made with the attorney to handle the surrender. The caseworker advised the parents to come to her office upon arrival in New Orleans.

After the parents arrived at the Children's Bureau, the caseworker conferred with them a few minutes. During the brief conference, she informed them that after the Act of Surrender had been signed, it could not be "undone."

They then walked about five blocks to a law office, where they were joined by the Casework Supervisor, Mrs. Virginia C. Jane'.

The Attorney-Notary invited the group into the conference room, where he read aloud the Act of Surrender and explained that it could not be revoked after it had been signed. It was then executed by the parents and the Casework Supervisor for the Children's Bureau in the presence of the Notary Public and two witnesses.

The following day, the parents telephoned the Children's Bureau, requesting that the child be returned to them. The bureau officials advised them that the Act of Surrender was final and could not be revoked. On August 21, 1975, the bureau placed the child in the home of adoptive parents. This litigation followed.

The trial judge found that the parents freely and voluntarily executed the Act of Surrender with full knowledge of its legal consequences and held that

the Act of Surrender, being to a licensed agency, could not be revoked under the statute, LSA-R.S. 9:402. We granted certiorari to review the judgment of the trial court. 325 So. 2d 282 (1976).

II.

GENERAL BACKGROUND

The State, acting as *parens patriae*, may, in certain limited circumstances, terminate the relationship which exists between a parent and his child. Such involuntary terminations include cases of abandonment or child neglect. Conversely, it is within the legal competence of natural parents to voluntarily and irrevocably surrender their rights to the custody and control of their child to a licensed agency willing to accept such custody and control with the view to the placement of the child for adoption.

Louisiana recognizes both the independent or private adoption and the agency adoption. However, the agency adoption is generally the most encouraged. Wadlington, *Adoption of Persons Under Seventeen in Louisiana*, 36 Tul. L. Rev. 201 (1962).

The four principal advantages of the agency adoption are: (1) when a child is placed, he is clearly available for adoption, the irrevocable consent of the parents or a decree of abandonment having previously been obtained; (2) only one hearing is necessary before a final adoption decree can be rendered (two are required for the independent adoption); (3) the agency, through its investigative resources, can carefully and scientifically seek to

match adopter and adopted compatibly; (4) both adopter and adopted are insulated from contact with or knowledge of the original parents.

Clearly establishing availability of the child for adoption before making the initial placement can eliminate the problem of having to remove the child from a qualified adoptive home and also the possibility of extortion or blackmail in many instances. The method of accomplishing this desirable result is through either the parental surrender to an agency or the judicial decree of abandonment, after which the abandoned child is placed in the custody of an agency which has authority to place him for adoption.

Voluntary surrender of a child to an agency for the purpose of adoption is effected by authentic act before a notary public and two witnesses. The formal requirements of the statute which authorizes such surrender must be strictly followed. The surrender is made by the living parents of a legitimate child, or by the natural mother of a child who was born out of wedlock and has not been formally acknowledged or legitimated by the father. When both parents of a legitimate child are living, a surrender by only one or a declaration of abandonment by only one shall not be binding on the other. There is no requirement of a minimum age for the execution of an act of surrender.

Once a parent legally surrenders his child to an agency this constitutes irrevocable consent to the subsequent adoption of the child. The parent by

birth plays no subsequent role in the adoption proceeding, in which the only parties are the agency, the child, the petitioners and the Department of Public Welfare.

If placement is made by an agency, a final decree of adoption can be rendered at the first hearing if the Department of Public Welfare does not recommend against the adoption. If a final decree is sought at the initial hearing, the petition for adoption will not be filed until the child has been residing with the petitioners for at least six months. 36 Tul.L.Rev. at pp. 212-214.

Contrasted with the agency adoption is the private adoption where continuing parental consent is required.

Just as in the agency adoption, there must be consent of the parents of a child before an adoption decree can be rendered after a private placement. However, in the agency adoption there is a provision for an irrevocable consent to the adoption in the form of the voluntary surrender. There is no such provision in the private adoption and the withdrawal of consent by either parent before an interlocutory decree is rendered will effectively bar adoption of the child. 36 Tul.L.Rev. at p. 217.

Thus, the two major procedural advantages of agency adoptions are (1) a final decree may be obtained after only one hearing if the child was placed in the home by an agency, and (2) the surrender of a child to an agency constitutes irrevocable consent.

The Louisiana Legislature, by virtue of La.R.S. 9:402, has established that a notarial surrender of a child to a licensed adoption agency is irrevocable, absent fraud or duress, and that the continuing consent of the parent is not required. *In re Imorello*, 229 La. 304, 85 So.2d 883 (1956); *Ball v. Campbell*, 219 La. 1076, 55 So. 2d 250 (1951). This is a policy decision made by the Legislature to protect the interest of the child, the agency, the adopting parents and to provide uniformity and certainty in agency adoptions.

It is extremely disheartening for adoptive parents who have invested in a child financially, and, more important, emotionally, by opening their hearts and homes to the child, to have it taken from them at the whim and caprice of the natural parents who have previously consented to the adoption. Adoptive couples take a child into their home after many years of waiting for a child to be born of their own union and they give this child all of their love and attention and nurture this child as if he were their own. The adoption laws of Louisiana provide that a period of six months must elapse between the date on which a child is placed in the home of a prospective adoptive couple and the date on which they may apply for adoption. The obvious purpose of such a waiting period is to enable the court to determine at the adoption hearing whether (a) the adoption is in the best interests of the child and (b) whether the prospective adoptive parents are capable of properly loving, rearing and educating the child and giving it all of the advantages which they can, considering their station of life and financial ability to do so. Over the period of the six months in which the child resides and is cared for by the adoptive parents, they literally pour out their love and lavish their attention upon the child and the bond that is forged between the parents and the child is far stronger than that which usually exists between

natural parents and their children. To permit surrender revocations merely because of a change of mind of the natural mother and/or father would discourage adoption of children by adoptive parents.

From the viewpoint of the agency, a revocation means that its painstaking efforts to find a home and child suitable for one another have gone for naught. For the child, revocation means an abrupt change in environment after the infant has become settled in the home of the adopting parents. Such a change can seriously damage the child's developing personality. The detrimental effect on the child who is made the subject of a legal tug-of-war between his natural parents and his adopting parents is obvious.

In addition to the foregoing considerations, a right of revocation may provide an opportunity for natural parents to extort money from the adopting parents in return for a promise not to revoke consent.

Irrevocability not only has desirable and beneficial results insofar as the interests of the child and adopting parents are concerned, but also serves a therapeutic function in relation of the natural parents. If the natural parents know that their decision is final, they can begin to adjust their feelings and lives accordingly. The natural parents don't have to agonize over some grace period of time after the surrender to decide whether or not they should revoke their consent. After the surrender is signed, the natural parents can begin the psychological adjustment which human nature requires of them. It is for these reasons that the Legislature of Louisiana, along with many other states, provides that a notarial surrender to a licensed agency is irrevocable by the natural parents, absent fraud or duress.

Public policy demands that the Louisiana adoption statutes should not be nullified by a decision that causes the public to fear the consequences of an agency adoption with the full knowledge that their efforts are at the whim and caprice of the natural parents. If any reforms to Louisiana's adoption laws are necessary, they should come from the Louisiana Legislature, not the courts.

III.

THE GOLZS' CONSENT WAS FULLY AND VOLUNTARILY GIVEN WITH FULL KNOWLEDGE OF ITS LEGAL CONSEQUENCES

The voluntariness of the Golzs' consent to the notarial Act of Surrender is a factual determination which raises no constitutional issues. The trial judge and the Louisiana Supreme Court both concluded that the Golzs' consent was informed and freely and voluntarily given after many months of deliberating their action.

The Louisiana Supreme Court stated:

As to consent, the trial judge found:

"There is no doubt in the Court's mind that there has never been any pressure, undue influence or the like brought to bear on these plaintiffs by the Children's Bureau. This is evident from the record and from December, 1974 up to the final act of surrender executed on August 18, 1975. It is also evident that these plaintiffs are mature individuals; not possessed of formal education beyond the ninth grade but by no means. . .

illiterate."

* * * * *

"The act of surrender executed in this case was not a rash, impulsive act on the part of the plaintiffs. It came after many months of careful and apparent continued thought and deliberation; during periods when these plaintiffs were thinking about surrendering their child, when the child was actually surrendered, when they had possession of their child and when they did not . . ."

The finding of the trial judge is entitled to great weight. *Canter v. Koehring Company*, La., 283 So. 2d 716 (1973); *Gin-Ice v. Helg*, 251 La. 261, 263 So. 2d 714 (1967).

We concur in the finding. The record reflects that the decision to execute the Act of Surrender was reached after lengthy deliberation. Consumption of the surrender resulted from petitioners' independent action in contacting the Children's Bureau. Although petitioners had already been informed of the consequences of the Act of Surrender, the Attorney-Notary carefully read and explained the document to them before it was signed. It plainly stipulated:

"That appearers do hereby surrender the custody of said child unto CHILDREN'S BUREAU, an agency licensed by the Louisiana State Department of Public Welfare for the placement of children for adoption, re-

presented herein by its Casework Supervisor, Mrs. Virginia C. Jane', here present and accepting said surrender, that with the execution of these presents, appearers give up and relinquish forever any legal claim to the said child, hereby transferring to the said Agency their authority over, and all of their rights and obligations to said child.

"Appearers further understand and consent that Children's Bureau may place said child for adoption, act for said appearers in any adoption proceeding, or provide such other care as shall be suitable without consulting or informing appearers."

After the execution of the document, Mrs. Golz commented: "C'est fini" (all is over). The Notary replied: "Yes, it is final."

* * * * *

As we have noted, the parents were fully aware of the content and effect of the instrument before they signed it. We conclude, as did the trial judge, that the surrender represents a free and deliberate exercise of will. This being true, the law gives it legal effect. (See Appendix B).

In connection with the execution of the surrender and appellant's knowledge of its contents and effects, the trial judge stated:

This time, with foreknowledge, before they ever

left Lafayette to come to New Orleans, they were told, knew and understood, that they were to come to New Orleans for the specific purpose of surrendering the child (formally) to the Bureau for adoption purposes...

The notary-lawyer who prepared the document proceeded very formally. The act was read to the petitioners in advance; they were afforded an opportunity to edit and/or correct it, to change their minds and, more importantly, the effects of that act were explained to them in detail (as they had been previously explained to plaintiff by Children's Bureau). The act of surrender was formally and properly executed in accordance with R.S. 9:402. (See Appendix C).

The Golzs well knew that the Act of Surrender was irrevocable, that they could not undo what they had done, and that the signing of the surrender was in truth and in fact the very end of the trail in executing their decision to permanently surrender the child to the agency for adoption. No pressure or undue influence whatsoever was brought to bear on the Golzs. Their decision to irrevocably surrender their child for agency placement and adoption was a fully informed, deliberate and voluntary act on their parts.

Apparently Appellants are not satisfied with the factual determinations made by the state trial judge and affirmed by the Louisiana Supreme Court. This is clear from the misstatement of facts contained in Appellants' Jurisdictional Statement, such as:

(1) The notary public, who was also an attorney

representing the Agency, did not advise Mr. and Mrs. Golz that what they were about to sign was an irrevocable surrender of their child (Jurisdictional Statement, p.5).

- (2) The Golzs did not understand the import, meaning or effect of the Act of Surrender (Jurisdictional Statement, p. 6).
- (3) There was coercion on the part of the adoption agency (Jurisdictional Statement, p. 12).

The above allegations are patently untrue and are directly contrary to the undisputed testimony of the notary public and the three persons who were present at the execution of the Act of Surrender. The Chief Justice of the Supreme Court of the State of Louisiana, as the organ of the court, summarized the events concerning the Act of Surrender before the attorney-notary in the following paragraph of its opinion (Appendix B):

The Attorney-Notary invited the group into the conference room, where he read aloud the Act of Surrender and explained that it could not be revoked after it had been signed. It was then executed by the parents and the Casework Supervisor for the Children's Bureau in the presence of the Notary Public and two witnesses.

This Court should not disturb the factual conclusions of the trial judge concurred in by the Louisiana Supreme Court. *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 123 (1969); *Guzman v. Pichirilo*, 369 U.S. 698 (1962); *Canter v. Koehring*, ___ La. ___, 283 So.2d 716, 724 (1973);

State v. Stokes, 250 La. 277, 195 So.2d 267 (1967).

IV.

THERE IS NO DUE PROCESS QUESTION

The Louisiana Supreme Court considered Appellants' due process claims. However, since the Golzs voluntarily and of their own instigation placed their child with the agency for adoption, there could be no deprivation of due process. The Louisiana Supreme Court stated:

[P]etitioners contend that the statute (9:402) is defective in that it provides for no hearing prior to the termination of parental rights and no notice or hearing prior to the granting of the adoption decree. Petitioners rely upon the decision of the United States Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972).

* * * * *

The holding in *Fuentes v. Shevin* is inapplicable to the present statute. That case involved the involuntary dispossession, or seizure, of property in the possession of the debtor under the quise of state action. In the instant case, the parents voluntarily delivered possession of the child to the agency and surrendered their parental rights in a formal instrument. Such a voluntary contractual disposition is not reprobated by the Due Process Clause.

* * * * *

We hold that the statute as applied in the instant case is constitutional.

In the instant case, both lower courts found that the Golz voluntarily and freely surrendered their child for adoption to the agency upon their own independent action in contacting the agency, and after eight months of consideration and consultation with the Children's Bureau and with the parents of Mrs. Golz. There was no forceful seizure of the child by the agency. Secondly, the Act of Surrender was a private consensual agreement with a private adoption agency. The due process clause is a limitation on governmental action, not private consensual agreements. *Bryant v. Jefferson Federal Savings and Loan Assn.*, 509 F.2d 511 (D.C. 1974).

Appellants argue that this case is of "national importance" requiring this Court to set up guidelines for determining the voluntariness of consent (Jurisdictional Statement, pp. 9, 12). It is submitted that the guidelines have been clearly articulated. In Louisiana, as in many other states, consent to a surrender may be vitiated on the grounds of error, fraud, duress or undue influence. *Ball v. Campbell*, 219 La. 1076, 55 So.2d 250, 254 (1951). In this respect, Appellants' statement that consent in Louisiana is *absolutely* irrevocable is manifestly incorrect (Jurisdictional Statement p. 9) However, there is no requirement for continuing consent in agency placements once that consent has been voluntarily and freely given in the first instance.

Louisiana is not alone in providing for the irrevocability of a surrender. New Mexico, West Virginia, Nevada, Mississippi, Indiana, Illinois, Ohio, New Jersey and the District of Columbia are a few examples of states in which an act of surrender by a natural parent is irrevocable in the absence of

fraud or duress. See New Mexico Statutes Ann. § 22-2-27 (Supp. 1971); West Virginia Code of 1971, ch. 48, art. 4-1(a) (Supp.); Nev. Rev. Statutes § 127.080; Miss. Code of 1972 Ann. § 93-17-9; Indiana Statutes § 3-120a; Ill. Statutes Ann., Ch. 4, § 9.1-11; Ohio Revised Code Ann. § 3107.06(2); Dist. of Columbia § 16-304 and § 32-786; N.J. Statutes 9:2-16.

Appellants further argue the due process clause requires an evidentiary hearing of an adversary nature when questions as to the voluntariness of the consent are raised. Even assuming, *arguendo*, that such an opportunity for a hearing may be required, the Golzs, by virtue of the Louisiana habeas corpus procedure, were in fact afforded an immediate, full and complete judicial trial on the issue of the voluntariness of their consent and the propriety of the Act of Surrender which they executed. *Mitchel v. W. T. Grant*, 416 U.S. 600, 611 (1974). Both lower courts concluded their consent was voluntary, deliberate and fully informed.

V.

THERE IS NO DUE PROCESS REQUIREMENT THAT THE GOLZS BE REPRESENTED BY LEGAL COUNSEL AT THE ACT OF SURRENDER NOR WERE THEY DEPRIVED OF SUCH COUNSEL.

The Louisiana Supreme Court stated:

The petitioners, of course, had the right to consult legal counsel of their choice at any time during their relationship with the Children's Bureau. The record does not reflect whether or not they did. If they did not do so, as they now allege, the absence of such legal consultation does not make the surrender infirm or unenforceable. See LSA-C.C.Art.

1779. The petitioners have cited no constitutional authority requiring that parties be represented by legal counsel in the confection of contracts of this type, and we know of none.

No one denied the Golzs an opportunity to retain counsel. *In fact, there was not one iota of evidence in the record which indicated that the Golzs did not speak to or retain legal counsel prior to the execution of the Act of Surrender on August 18, 1975.* The evidence, as the trial judge noted, further indicates the Golzs had an "old-time" family meeting on the subject of the adoption of their child. It must be remembered that the Golzs could have consulted their own attorney in Lafayette or elsewhere in December of 1974 as to the legal consequences of signing the document surrendering their child; likewise, they could have consulted an attorney in Lafayette or elsewhere during January or February before the child was born; they could have consulted their attorney during the months of March and April -- the interim between the birth of the child and the sudden appearance of Mrs. Golz in the office of the Children's Bureau on April 9, at which time she left the child with the Children's Bureau in their temporary custody pending the making of arrangements for both her husband and herself to return to New Orleans and sign the formal documents of surrender; the Golzs could have consulted their attorney while the child was in the temporary custody of the Children's Bureau from April 9 through April 18, 1975, on which latter date they picked up the child and returned with the child to Lafayette; they could have consulted their attorney during the period from April 18 until August 18, 1975 -- a period of four solid months. To summarize, the Golzs enjoyed a period of time from December 9, 1974 to August 18, 1975 -- a period of eight months and nine days, during which they could have

consulted their attorney, and they allegedly failed to exercise this right. It is noteworthy in this connection that the Golzs were in contact with Mrs. Golz's parents who resided in Lafayette and could certainly have selected an attorney of their own choice if they had so desired to consult one, but *it is most noteworthy that they were able to locate and consult an attorney immediately after changing their minds.* Accordingly, legal counsel was always available to Mr. and Mrs. Golz, and it is apparent from the lapse of time that they did not desire to consult an attorney because they full well understood -- and had been advised on many occasions during said eight month period -- that the signing of a document of surrender was final and irrevocable.

Under these circumstances, the Golzs' contention that they were deprived of legal counsel has no merit whatever.

The evidence was also clear and the lower courts so found that representatives of the agency as well as the notary who passed the surrender *fully explained the effects and consequences of the surrender to the Golzs before it was ever signed.* What we have in this case is not a lack of understanding or lack of consent, but a change of mind after the informed consent had been given freely.

VI.

THE GOLZS ARE NOT ENTITLED TO NOTICE OR A HEARING IN ANY ADOPTION PROCEEDING SUBSEQUENT TO THE SURRENDER

The Act of Surrender which the Golzs signed, states in part:

Appearers further understand and consent that Children's Bureau may place said child for adoption, act for said appearers in any adoption proceeding, or provide such other care as shall be suitable, without consulting or informing appearers. (See Appendix D).

The Notary carefully read the Act aloud to the Golzs and its consequences were fully explained to them before it was signed.

The Louisiana Supreme Court held that La. R.S. 9:402 as applied in the instant case was constitutional.

Petitioners also complain that the statute precludes notice to the parents and an opportunity for hearing in the adoption proceeding subsequent to the surrender. We find no deprivation of due process here. Once the rights of the parents have been surrendered to the agency, the parents no longer have an interest to be protected in the adoption proceeding. The agency becomes the real party in interest and, as the statute provides, acts in lieu of the parents in subsequent adoption proceedings. It is well established that the Due Process Clause applies only when a person is subject to deprivation of "life, liberty, or property" by state action. See *Reifman v. Mulkey* 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed. 2d 830 (1967); *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

We hold that the statute as applied in the instant case is constitutional.

The Appellants really are not seeking an opportunity for a hearing prior to the adoption of their child. They already have had a full and complete trial. What they are seeking is a decision that their consent is absolutely revocable at any time at their own whim and caprice. This raises no substantial federal question, but addresses itself to the regulation of the adoption procedure by the State of Louisiana.

CONCLUSION

The Louisiana Legislature, in its wisdom, has recognized that revocable consent would have an adverse consequence on the adoption process. Adopting parents would be extremely reluctant to accept children, thereby necessitating costly foster care and its attendant psychological implications insofar as the child is concerned. Adopting parents who do receive children into their homes would live with the uncertainty and fear that the child may be removed at the whim and caprice of the natural parents. This would not be a conducive atmosphere for the child or the prospective parents. The Louisiana Legislature has deemed it desirable to bring certainty into this area of the law. The Act of Surrender fixes with certainty the rights and obligations of the natural parents, the child, the agency and the adopting parents. The adoption agency, by virtue of the natural parents' consent in the Surrender, thereafter acts in lieu of the natural parents in the adoption procedure. The desirable social goal of confidentiality of the identity of the natural parents and of the adoptive parents is thereby preserved.

It is evident from the facts that the Golzs' consent was fully informed and totally voluntary after many months of prior careful deliberation of the consequences of signing a Surrender and placing their child with the agency for the

purpose of adoption. The judgment of the Louisiana Supreme Court is so obviously correct based upon the facts as to warrant no further review by this Court. Additionally, the judgment of the Louisiana Supreme Court rests on an adequate non-federal basis relating to the Golzs' consent. In fact, the appeal presents no substantial federal question. Accordingly, the judgment of the Louisiana Supreme Court should be affirmed or, alternatively, the appeal of Appellants should be dismissed.

Respectfully submitted,

BALDWIN, HASPEL, RAINOLD,
MEYER & RESO:
ROBERT R. RAINOLD

Attorney for Children's Bureau,
Defendant-Appellee
225 Baronne Street, Suite 2411
New Orleans, Louisiana 70112

CERTIFICATE OF SERVICE

I, Robert R. Rainold, attorney for Appellee in the above entitled appeal, hereby certify that on May 5th, 1976, I served the above Motion of Appellee to Dismiss Appeal or to Affirm upon Donald Juneau, Stanley A. Halpin, Jr. and Michael F. Thompson, attorneys for Appellant, pursuant to Rule 33(1) by depositing the requisite copies in the United States mails, with first class postage prepaid, addressed to them at their respective office addresses.

Robert R. Rainold
Attorney for Children's Bureau,
Defendant-Appellee
225 Baronne Street, Suite 2411
New Orleans, Louisiana 70112

APPENDIX

[APPENDIX A]

R.S. 9:402
OF PERSONS**§ 402. Voluntary surrender of custody of child; procedure**

Any parent of a child, whether the child was born in wedlock or out of wedlock and whether the parent is over or under twenty-one years of age, may surrender the permanent custody of his child to an agency for the purpose of having the child adopted by appearing before a notary and two witnesses and declaring that all of his rights, authority, and obligations, except those pertaining to property, are transferred to the agency. This authentic act shall be signed by the agency and shall constitute a transfer of custody to the agency after which the agency shall act in lieu of the parent in subsequent adoption proceedings. No surrender of the custody of a child shall be valid unless it is executed according to the provisions of this Part.

[APPENDIX B]

William Jonathan GOLZ and Pamela
Marie Fortier Golz

v.

CHILDREN'S BUREAU OF NEW
ORLEANS, INC.

No. 57373.

Supreme Court of Louisiana.

Jan. 29, 1976.

Reasons for Judgment given Feb. 12, 1976.

Rehearing Denied Feb. 20, 1976.

Habeas corpus proceeding was brought involving issue of whether a notarial act of surrender by parents of child to licensed adoption agency was valid and irrevocable. The Civil District Court for the Parish of Orleans, Melvin Duran, J., rejected petitioners' demand and certiorari was granted. The Supreme Court, Sanders, C. J., held that evidence supported finding that parents of child had validly consented to act of surrender of child; that the act of surrender executed by both parents of legitimate child was irrevocable; and that the adoption statute was constitutional as applied.

Judgment affirmed.

Summers, J., dissented and was of the opinion that a rehearing should be granted.

1. Infants \Leftrightarrow 19.4

Minors: Consent of parties is requirement for act of surrender by parents of child to licensed adoption agency. LSA-R.S. 9:402 et seq.; LSA-C.C. arts. 1779, 1819.

2. Infants \Leftrightarrow 19.4

Minors: Evidence sustained finding that there was valid consent by parents to act of surrender of child to licensed adoption agency. LSA-R.S. 9:402 et seq.; LSA-C.C. arts. 1779, 1819.

3. Contracts \Leftrightarrow 155

"Contract of adhesion" is standard contract, usually in printed form, prepared by party of superior bargaining power for adherence or rejection of the weaker party. LSA-C.C. arts. 1766, 1811.

See publication Words and Phrases for other judicial constructions and definitions.

4. Infants \Leftrightarrow 19.4

Mother's surrender to adoption agency of child born out of wedlock, not formally acknowledged or legitimated by father, terminates rights of both parents. LSA-R.S. 9:402, 9:404.

5. Bastards \Leftrightarrow 15

Termination of rights of both parents results from court judgment of abandonment rendered against mother of illegitimate child. LSA-R.S. 9:402, 9:404.

6. Parent and Child \Leftrightarrow 2(3.7)

As to legitimate children, no surrender or court order of abandonment as to one parent is binding upon the other.

7. Parent and Child \Leftrightarrow 2(3.7)

An effective surrender of legitimate child requires concurrence of both living parents. LSA-R.S. 9:402 et seq.

8. Parent and Child \Leftrightarrow 2(3.7)

Judgment of abandonment as to both parents of legitimate child requires that both parents be parties to the proceeding. LSA-R.S. 9:425, 9:427.

9. Infants \Leftrightarrow 19.4

Minors: Act of surrender executed by both parents of legitimate child to licensed adoption agency in compliance with statute is irrevocable. LSA-R.S. 9:425, 9:427.

10. Constitutional Law \Leftrightarrow 255(4)

Where parents voluntarily delivered possession of legitimate child to adoption

agency and surrendered their parental rights in formal instrument, such voluntary contractual disposition did not violate due process clause. U.S.C.A. Const. Amend. 14; LSA-C.C. art. 1779.

11. Infants \Leftrightarrow 19.4

Minors: Even if parents did not consult legal counsel of their choice at any time during their relationship with adoption agency, that would not make the act of surrender of legitimate child infirm or unenforceable. U.S.C.A. Const. Amend. 14; LSA-C.C. art. 1779.

12. Adoption \Leftrightarrow 2Constitutional Law \Leftrightarrow 255(4)

Once rights of parents had been surrendered to adoption agency, parents no longer had interest to be protected in the adoption proceeding and fact that adoption statute precluded notice to them and opportunity for hearing in adoption proceeding subsequent to surrender did not deprive them of due process. LSA-R.S. 9:402 et seq.; LSA-C.C. arts. 1779, 1819; U.S.C.A. Const. Amend. 14.

Thompson & Perrin, Michael F. Thompson, Lafayette, for plaintiffs-applicants.

Baldwin, Haspel, Molony, Rainold & Meyer, Robert R. Rainold, New Orleans, for defendant-respondent.

SANDERS, Chief Justice.

Because of the exigencies of this case, requiring prompt disposition, we hand down our decision, the reasons for which will follow in due course.

The judgment of the Civil District Court for the Parish of Orleans, rejecting petitioners' demand, is affirmed.

SUMMERS, J., dissents.

Reasons for the judgment handed down herein on January 29, 1976.

SANDERS, Chief Justice.

The primary issue in this habeas corpus proceeding is whether or not a notarial act of surrender by parents of a child to a licensed adoption agency is valid and irrevocable. We hold that it is.

Petitioners, William Jonathan Golz and Pamela Marie Fortier Golz, are married and residents of Lafayette. On December 9, 1974, when Mrs. Golz was seven months pregnant, she came to New Orleans with the knowledge of her husband in order to arrange for the delivery of the baby at the New Orleans Charity Hospital and to initiate placement of the child for adoption. While in New Orleans, Mrs. Golz contacted the Children's Bureau of New Orleans, Inc., a state-licensed adoption agency. Mrs. Frances Keating, the intake supervisor, granted her an appointment on the same day. She conducted an intake interview, securing basic information concerning the family. She advised Mrs. Golz that placement would require the formal consent of both parents in an act of surrender and that once the surrender had been signed, it was irrevocable. After the mother inquired how soon the surrender could be signed, the intake supervisor advised her that it could be executed after the child was born.

The intake supervisor arranged for the assignment of Diane Lambly, a caseworker, to the adoption so that Mrs. Golz would be able to confer with her on her hospital visit scheduled for the following week. Mrs. Golz cancelled her trip to New Orleans the following week and advised the adoption agency that she would notify it when she returned.

From December 9, 1974, to February 12, 1975, Mrs. Golz had several telephone and written communications with Diane Lambly, the caseworker. During this period, she informed the agency that she had decided to have the baby delivered in Lafayette, instead of New Orleans. She expressed a desire to continue the adoption plan, and

the caseworker assured her that it could be done, despite the change in the place of delivery.

The child, Joshua Golz, was born on Thursday, February 13, 1975. The following day, Mr. Golz called the caseworker by telephone, advised her of the birth of the child, and made arrangements to bring the child for adoption on the weekend. The caseworker again explained that for placement both parents had to be present to execute a notarial act of surrender. She cautioned that when the notarial instrument was signed, they could no longer change their minds concerning the adoption. Ultimately, after a series of telephone conversations, the father telephoned that he and his wife had changed their minds about adoption. The Children's Bureau then closed the case.

On April 9, 1975, Mrs. Golz came to the Children's Bureau with the child and asked the caseworker if the agency would provide foster care pending the signing of a surrender by herself and her husband. She informed the caseworker that her husband was out of the state, but that he was agreeable to signing a surrender for adoption. The caseworker explained to her that the agency did not accept children for long-term foster care, but that it would accept temporary custody under the circumstances.

When the caseworker failed to hear from the parents by April 15, she telephoned the father. He stated that they had changed their minds about adoption and would come and get the baby. On April 18, the parents secured the child, and the case was again closed.

On August 18, Mr. Golz again telephoned the caseworker, expressing a desire to place the child for adoption. He ultimately inquired whether an act of surrender could be signed the same day. The caseworker advised him that arrangements would have to be made with an attorney, but that she would call him back. A few minutes later,

the caseworker telephoned the parents to inform them that arrangements had been made with the attorney to handle the surrender. The caseworker asked the parents to come to her office upon arrival in New Orleans.

After the parents arrived at the Children's Bureau, the caseworker conferred with them a few minutes. During the brief conference, she informed them that after the Act of Surrender had been signed, it could not be "undone."

They then walked about five blocks to a law office, where they were joined by the Casework Supervisor, Mrs. Virginia C. Jané.

The Attorney-Notary invited the group into the conference room, where he read aloud the Act of Surrender and explained that it could not be revoked after it had been signed. It was then executed by the parents and the Casework Supervisor for the Children's Bureau in the presence of the Notary Public and two witnesses.

The following day, the parents telephoned the Children's Bureau, requesting that the child be returned to them. The bureau officials advised them that the Act of Surrender was final and could not be revoked. On August 21, 1975, the bureau placed the child in the home of adoptive parents. This litigation followed.

The trial judge found that the parents freely and voluntarily executed the Act of Surrender with full knowledge of its legal consequences and held that the Act of Surrender, being to a licensed agency, could not be revoked under the statute, LSA-R.S. 9:402. We granted certiorari to review the judgment of the trial court. 325 So.2d 282 (1976).

In this Court, the petitioners advance various arguments, but they can be summarized from the assignments of error as follows:

(1) There was no valid consent by the parents to the Act of Surrender.

(2) Under the statute, the parents could and did revoke their consent.

(3) The statutory adoption procedure of LSA-R.S. 9:402 et seq. as applied here unconstitutionally deprives the parents and the child of due process of law.

Consent of the Parents

[1] The consent of the parties is one of the requirements for an act of surrender. If consent is lacking, there is no valid surrender. LSA-R.S. 9:402; LSA-C.C. Arts. 1779, 1819; *Colo v. Lumbermens Mutual Casualty Company*, La.App., 160 So.2d 785 (1964); S. Litvinoff, 6 Louisiana Civil Law Treatise—Obligations (Book 1), § 129, pp. 210-211 (1969).

As to consent, the trial judge found:

"There is no doubt in the Court's mind that there has never been any pressure, undue influence or the like brought to bear on these plaintiffs by the Children's Bureau. This is evident from the record and from December, 1974 up to the final act of surrender executed on August 18, 1975. It is also evident that these plaintiffs are mature individuals; not possessed of formal education beyond the ninth grade but by no means . . . illiterate."

* * *

"The act of surrender executed in this case was not a rash, impulsive act on the part of the plaintiffs. It came after many months of careful and apparent continued thought and deliberation; during periods when these plaintiffs were thinking about surrendering their child, when the child was actually surrendered, when they had possession of their child and when they did not. . . ."

The finding of the trial judge is entitled to great weight. *Canter v. Koehring Company*, La., 283 So.2d 716 (1973); *Gin-*

³⁰ *Lee v. Helg*, 251 La. 261, 203 So.2d 714 (1967).

[2] We concur in the finding. The record reflects that the decision to execute the Act of Surrender was reached after lengthy deliberation. Consummation of the surrender resulted from petitioners' independent action in contacting the Children's Bureau. Although petitioners had already been informed of the consequences of the Act of Surrender, the Attorney-Notary carefully read and explained the document to them before it was signed. It plainly stipulated:

"That appearers do hereby surrender the custody of said child unto CHILDREN'S BUREAU, an agency licensed by the Louisiana State Department of Public Welfare for the placement of children for adoption, represented herein by its Casework Supervisor, Mrs. Virginia C. Jané, here present and accepting said surrender, that with the execution of these presents, appearers give up and relinquish forever any legal claim to the said child, hereby transferring to the said Agency their authority over, and all of their rights and obligations to said child."

"Appearers further understand and consent that Children's Bureau may place said child for adoption, act for said appearers in any adoption proceeding, or provide such other care as shall be suitable, without consulting or informing appearers."

After the execution of the document, Mrs. Golz commented: "C'est fini" [all is over].¹ The Notary replied: "Yes, it is final."

The petitioners, however, equate the Act of Surrender to a contract of adhesion, in which because of disparate bargaining ability and the absence of negotiation between attorneys for the respective parties, consent was not free.

1. The New Cassell's French Dictionary, *verbo fini*, p. 348 (1971).

[3] Broadly defined, a contract of adhesion is a standard contract, usually in printed form, prepared by a party of superior bargaining power for adherence or rejection of the weaker party. Often in small print, these contracts sometimes raise a question as to whether or not the weaker party actually consented to the terms. See LSA-C.C. Arts. 1766, 1811; S. Litvinoff, 6 Louisiana Civil Law Treatise—Obligations (Book 1), § 194, pp. 346-349 (1969).

The Act of Surrender here raises no substantial question as to consent. It is a one-page, typewritten document, captioned Act of Surrender of Joshua Golz. Executed in strict conformity with the statute, it serves one purpose and one purpose only. It irrevocably transfers custody of the child to the adoption agency for placement in an adoptive home.

As we have noted, the parents were fully aware of the content and effect of the instrument before they signed it. We conclude, as did the trial judge, that the surrender represents a free and deliberate exercise of will. This being true, the law gives it legal effect.

Revocability of Consent

The petitioners assert, however, that under the statute consent can be revoked.

LSA-R.S. 9:402 provides:

"Any parent of a child, whether the child was born in wedlock or out of wedlock and whether the parent is over or under twenty-one years of age, may surrender the permanent custody of his child to an agency for the purpose of having the child adopted by appearing before a notary and two witnesses and declaring that all of his rights, authority, and obligations, except those pertaining to property, are transferred to the agency. This authentic act shall be signed by the agency and shall constitute a transfer of custody to the agency after which the agency shall act in lieu of the

parent in subsequent adoption proceedings. No surrender of the custody of a child shall be valid unless it is executed according to the provisions of this Part."

On its face, the statute is clear. It authorizes the surrender of "permanent custody" to a licensed agency and the transfer to that agency of all of the parents' rights, authority, and obligations, excepting only those pertaining to property. Thereafter, the agency acts in lieu of the parents in adoption proceedings.

In the case of *In re Amorello*, 229 La. 304, 85 So.2d 883 (1956), dealing with the surrender of an illegitimate child under this statutory provision, this Court stated:

"The act of surrender in favor of an accepting agency gives the irrevocable control and custody of the child to that agency with the privilege of placing it for adoption."

See also *Ball v. Campbell*, 219 La. 1076, 55 So.2d 250 (1951); *Wadlington, Adoption of Persons under Seventeen in Louisiana*, 36 Tul.L.Rev. 201, 214 (1962).

Petitioners argue, however, that LSA-R.S. 9:404 makes a distinction between the mother's surrender of an illegitimate child and the parents' surrender of a legitimate child. That section provides:

"A surrender by the mother of a child born out of wedlock who has not been formally acknowledged or legitimated by the father terminates all parental rights except those pertaining to property. The same shall be true as to a court order of abandonment. However, no surrender or court order of abandonment as to only one living parent of a legitimate child shall be binding upon the other living parent."

Specifically, the petitioners argue that the section provides for termination of parental rights when an illegitimate child is surrendered by the mother but contains no such authority for the surrender of a legiti-

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mate child. Hence, petitioners reason that the mother's surrender of an illegitimate child is irrevocable, while the parents' surrender of a legitimate child may be revoked.

[4-8] In our opinion, the section does not lend itself to such an interpretation. The section merely regulates the termination of rights when there are two living parents. The mother's surrender of a child born out of wedlock, not formally acknowledged or legitimated by the father, terminates the rights of both parents. The same termination of the rights of both parents results from a court judgment of abandonment rendered against the mother of an illegitimate child. As to legitimate children, no surrender or court order of abandonment as to one parent is binding upon the other. An effective surrender of a legitimate child requires the concurrence of both living parents. Likewise, a judgment of abandonment as to both parents of a legitimate child requires that both parents be parties to the proceeding.

This construction is fortified by other provisions of the adoption statute. LSA-R.S. 9:425 dispenses with service of the adoption petition upon the living parents when the child has been legally surrendered to a licensed agency. LSA-R.S. 9:427 dispenses with the requirement that the Welfare Department locate and consult the living parents when the child has been legally surrendered. LSA-R.S. 9:434 authorizes a final decree of adoption at the first hearing when the child has been placed by a licensed adoption agency.

Louisiana is not alone in providing for the irrevocability of an act of surrender to a licensed adoption agency. New Mexico, Nevada, Mississippi, Indiana, Illinois, Ohio, New Jersey, and the District of Columbia are among the jurisdictions which provide that such a surrender by a natural parent is irrevocable, in the absence of fraud or duress. See New Mexico Statutes Ann. § 22-2-27 (Supp.1975); Nev.Rev.Statutes § 127.080; Miss.Code of 1972 Ann. § 93-17-9; Ohio Revised Code Ann. § 3107.06 (1974).

(B)(2); Dist. of Columbia § 16-304 and § 32-786; N.J.Statutes 9:2-16; *Acedo v. Arizona Dept. of Public Welfare*, 20 Ariz. App. 467, 513 P.2d 1350 (1973); *Catholic Charities of the Diocese of Galveston, Inc. v. Harper*, 161 Tex. 21, 337 S.W.2d 111 (1960); *Gonzales v. Toma*, 330 Mich. 35, 46 N.W.2d 453 (1951); *Kozak v. Lutheran Children's Aid Society*, 164 Ohio 335, 130 N.E.2d 796 (1955); *Adoption of Doe*, 87 N.M. 253, 531 P.2d 1226 (1975).

[9] We conclude that an act of surrender executed by both parents of a legitimate child to a licensed adoption agency in compliance with LSA-R.S. 9:402 is irrevocable.

Constitutionality of Statute

Finally, petitioners assert that the statutory procedure applied here is unconstitutional in that it deprives them and their child of due process of law. Specifically, petitioners contend that the statute is defective in that it provides for no hearing prior to the termination of parental rights and no notice or hearing prior to the granting of the adoption decree. Petitioners rely upon the decision of the United States Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).

In *Fuentes v. Shevin*, supra, the Supreme Court of the United States held that the pre-judgment replevin statutes of Florida and Pennsylvania, giving a creditor the right to take immediate possession of movable property in the hands of the debtor, violated procedural due process under the Fourteenth Amendment to the United States Constitution. The Florida statute authorized repossession of the goods "without judicial order, approval or participation." The Pennsylvania statute was considered to be essentially the same, except that it had no requirement that a hearing on the merits of conflicting claims ever be held. See *Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974).

[10] The holding in *Fuentes v. Sherin* is inapplicable to the present statute. That case involved the involuntary dispossession, or seizure, of property in the possession of the debtor under the guise of state action. In the instant case, the parents voluntarily delivered possession of the child to the agency and surrendered their parental rights in a formal instrument. Such a voluntary contractual disposition is not reprobated by the Due Process Clause. Contrary to petitioners' contention, due process does not require that a judicial hearing precede the execution of the contract.

[11] The petitioners, of course, had the right to consult legal counsel of their choice at any time during their relationship with the Children's Bureau. The record does not reflect whether or not they did. If they did not do so, as they now allege, the absence of such legal consultation does not make the surrender infirm or unenforceable. See LSA-C.C. Art. 1779. The petitioners have cited no constitutional authority requiring that parties be represented by legal counsel in the confection of contracts of this type, and we know of none.

[12] Petitioners also complain that the statute precludes notice to the parents and an opportunity for hearing in the adoption proceeding subsequent to the surrender. We find no deprivation of due process here. Once the rights of the parents have been surrendered to the agency, the parents no longer have an interest to be protected in the adoption proceeding. The agency becomes the real party in interest and, as the statute provides, acts in lieu of the parents in subsequent adoption proceedings. It is well established that the Due Process Clause applies only when a person is subject to deprivation of "life, liberty, or property" by state action. See *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

We hold that the statute as applied in the instant case is constitutional.

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With these reasons for judgment, we repeat the decree handed down in this matter on January 29, 1976: The judgment of the Civil District Court for the Parish of Orleans, rejecting petitioners' demand, is affirmed.

SUMMERS, J., dissents.

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APPENDIX C

JUDGMENT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 598-179

DIVISION "H"

DOCKET 5

WILLIAM JONATHAN GOLTZ AND PAMELA MARIE
FORTIER GOLTZ
VS.
CHILDREN'S BUREAU OF NEW ORLEANS

JUDGMENT

The application of William Jonathan Goltz and Pamela Marie Fortier Goltz for a writ of habeas corpus herein, came on this day to be heard:

PRESENT: MICHAEL F. THOMPSON, Attorney for
William Jonathan Goltz and Pamela Marie
Fortier Goltz

ROBERT R. RAINOLD, Attorney for Children's Bureau of New Orleans

When, after hearing the pleadings, the evidence and argument of Counsel, the Court Considering the law and evidence to be in favor of respondent, for the reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the writ of habeas Corpus heretofore granted herein be vacated and annulled and that the Relator's demand be rejected, at their costs.

JUDGMENT READ, RENDERED AND SIGNED IN
OPEN COURT THIS 11TH. DAY OF SEPTEMBER, 1975

S/ Melvin J. Duran
JUDGE

NO. 598-179 **DIVISION "H"** **DOCKET 5**

**WILLIAM JONATHAN GOLTZ AND
PAMELA MARIE FORTIER GOLTZ**

vs
CHILDREN'S BUREAU OF NEW ORLEANS

FILED: Sep. 15, 1975
Deputy Clerk
Civil District Court

REASONS FOR JUDGMENT

The evidence preponderates to establish the following facts.

In December, 1974, when plaintiff-wife was seven and a half months pregnant, with the knowledge and consent of her husband she initially contacted the Children's Bureau, to arrange for the surrender and adoption of their child when it was born.

The child was born February 13, 1975, and in the interim between December 1974 and February 14, 1975, there were numerous occasions on which the proposed surrender of the child for adoption was planned and discussed by the parties. Firm, definite arrangements were made to surrender the child as late as February 14, 1975, the day after its birth. These were not carried out on that date because, as yet, the mother and child were not discharged from the hospital. The physical surrender of the child was planned by the father, acting for himself and his wife, with the Bureau scheduled to meet them and to receive the baby the next day. These plans were cancelled on the following day, with the plaintiffs informing the defendants that they had changed their minds. Then, in April, 1975, the plaintiffs themselves revived the situation, contacted the Bureau, physically surrendering custody for about a week to the defendants. Then they again changed their minds, picked up their child and cancelled all plans for

adoption. They had the custody of their baby for four months and then in August they, not the Bureau, again revived the situation.

This time, with foreknowledge, before they ever left Lafayette to come to New Orleans, they were told, knew and understood, that they were to come to New Orleans for the specific purpose of surrendering the child (formally) to the Bureau for adoption purposes. The child's clothing, food, etc. were brought with the child, as were instructions for its feeding, etc. Rather than go directly to the lawyer's office to execute the formal act of surrender, the Bureau suggested they meet privately. This was accomplished and following the conference, the parties went to the lawyer's office where an act of surrender was to be executed. The notary-lawyer who prepared the document proceeded very formally. The act was read to the petitioners in advance; they were afforded an opportunity to edit and/or correct it, to change their minds and, more importantly, the effects of that act were explained to them in detail (as they had been previously explained to plaintiff by the Children's Bureau). The act of surrender was formally and properly executed in accordance with R. S. 9:402.

The next day, the plaintiffs phoned long-distance, as they had on many previous occasions, and said they had changed their minds and did not want to go ahead with the surrender. That was on August 19, 1975. On August 21, 1975, the child was placed by the Bureau for adoption with prospective adoptive parents. These parties remain unknown and are in actual physical possession of the child since August 18, 1975.

There is no doubt in the Court's mind that there has never been any pressure, undue influence or the like brought to bear on these plaintiffs by the Children's Bureau. This is evident from the record and from December, 1974 up to the final act of surrender executed on August 18, 1975. It is also evident that these plaintiffs are mature individuals; not possessed of formal education beyond the ninth grade but by no means dumb or illiterate. They are possessed of all their

faculties, and were throughout the many months during which they deliberated in these premises.

The record shows that at first the plaintiff-wife planned to come from Lafayette to New Orleans to have her baby and to keep the plans for adoption from her parents. However, these parents were brought into the situation and obviously, there was some semblance of the "old-time" family meeting having been held.

The gist of the plaintiff's suit is lack of *continuing consent* and their right to change their minds again and again and again, even after they were fully aware of the fact that the final act of surrender, once executed, was irrevocable. They allege they had no real knowledge or understanding of the import of their action, did not understand what the act of surrender meant and the effects thereof.

During the course of this trial, defense counsel questioned the plaintiff-wife about the act of surrender, whether its consequences were explained to her, etc. He then showed the document to her and asked her to identify her signature on it. She looked long and hard at the paper and then snatched it from the attorney's hands, crumpled it in her hands and attempted to destroy it. The Court appreciates the fact that she was emotional while on the stand and that the emotional disturbance and scene in the courtroom was but a display of human emotions. However, observing her general conduct and demeanor while on the stand, her having again viewed the document, looked at it carefully and for a considerable period of time before attempting to destroy it causes the Court to believe that she knew full well the importance of that document and the consequences of her having signed it.

The act of surrender executed in this case was not a rash, impulsive act on the part of the plaintiffs. It came after many months of careful and apparent continued thought and deliberation; during periods when these plaintiffs were thinking about surrendering their child, when the child was

actually surrendered, when they had possession of their child and when they did not, etc.

The Court reads R. S. 9:402 and finds no ambiguity there. Its language is clear: it covers children born in and out of wedlock. There is no distinction to be drawn between an unwed mother alone surrendering her illegitimate child and both parents jointly surrendering their legitimate child.

The court relies heavily upon *IN RE: AMORELLO*, 229 La. 304, 85 So. 2d 883 (1956) and *BELL V. CAMPBELL*, 219 La. 1075, 55 So. 2d 250, and concludes from the statute and these decisions that the act of surrender executed by these plaintiffs was irrevocable. The law does not require the continued consent of the blood parents beyond the point at which they freely and voluntarily sign the act of surrender.

For these reasons, there has been judgment rendered setting aside and recalling the alternative writ issued, a refusal to grant a writ of habeas corpus and a dismissal of plaintiff's lawsuit at their costs.

New Orleans, Louisiana, September 15th, 1975.

s/ Melvin J. Duran
J U D G E

APPENDIX D

STATE OF LOUISIANA
PARISH OF ORLEANS

ACT OF SURRENDER OF JOSHUA GOLZ (MALE)

BE IT KNOWN, that on this 18th day of August, in the year of our Lord nineteen hundred and seventy-five,

BEFORE ME, JOEL A. MENDLER, a Notary Public duly commissioned and qualified in the State of Louisiana,

PERSONALLY CAME AND APPEARED:

MRS. PAMELA MARIE FORTIER GOLZ, wife of/and WILLIAM JONATHAN GOLZ, who, after being duly sworn, did declare and say:

That your affiant, Mrs. Pamela Marie Fortier Golz, wife of William Jonathan Golz, was born on June 21, 1955 and accordingly is 20 years of age; that your affiant William Jonathan Golz was born on November 13, 1953 and accordingly is 21 years of age; that they were married on April 11, 1972 in Lafayette, Louisiana, and that their said marriage has never been dissolved.

That a male child was born to your affiant, Mrs. Pamela Marie Fortier Golz on February 13, 1975 and was registered under the name Joshua Golz with the Bureau of Vital Records for the State of Louisiana under Certificate No. 117-75-06511; that your affiants are both persons of the white or Caucasian race; that the address of your affiants is 310 Dunand Street, Lafayette, Louisiana.

That appearers do hereby surrender the custody of said child unto CHILDREN'S BUREAU, an agency licensed by the Louisiana State Department of Public Welfare for the

placement of children for adoption, represented herein by its Casework Supervisor, Mrs. Virginia C. Jane', here present and accepting said surrender, that with the execution of these presents, appearers give up and relinquish forever any legal claim to the said child, hereby transferring to the said Agency their authority over, and all of their rights and obligations to said child.

Appearers further understand and consent that Children's Bureau may place said child for adoption, act for said appearers in any adoption proceeding, or provide such other care as shall be suitable, without consulting or informing appearers.

THUS DONE AND SIGNED at New Orleans, Louisiana, in the presence of the undersigned witnesses, on the date and day above written.

s/ Pamela Marie Fortier Golz

s/ Billy Golz

CHILDREN'S BUREAU

WITNESSES:

BY: S/ Virginia C. Jane'

S/ Georgia N. Ryan
S/ Faye Huffner

S/ Joel A. Mendlar
NOTARY PUBLIC

A TRUE COPY:

S/ Joel A. Mendlar
NOTARY PUBLIC